

225315

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SEMINOLE ELECTRIC COOPERATIVE, INC.

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant

Docket No. NOR 42110

**DEFENDANT CSX TRANSPORTATION, INC.'S REPLY TO COMPLAINANT'S
SECOND PETITION TO REVISE PROCEDURAL SCHEDULE**

Defendant CSX Transportation, Inc. ("CSXT") hereby submits its reply to Seminole Electric Cooperative, Inc.'s ("SECI") Second Petition to Revise Procedural Schedule ("Petition"). CSXT neither supports nor opposes SECI's second request for more time to prepare its opening evidence, deferring to the Board's judgment on the appropriate disposition of the Petition. However, CSXT is filing this Reply to express its growing concern that the apparent complexity of SECI's planned opening evidence may prevent CSXT from preparing its reply evidence within the time allotted under the current procedural schedule. While CSXT does not ask for any additional time now, the Board should be aware that CSXT may need an extension of time for filing its Reply Evidence if SECI's Opening Evidence proves to be as intricate as it appears it may be.

SECI's multiple extension requests have been based primarily upon expressions of difficulties that it has faced in assembling its Stand Alone Cost ("SAC") evidence in a manner that complies with the revised SAC rules set forth in *Major Issues in Rail Rate Cases*, STB Ex Parte 657 (Sub-No. 1) (served Oct. 20, 2006). However, SECI also indicates in its most recent Petition that it is contemplating a proposed Stand Alone Railroad ("SARR") based upon a


“complex” traffic group and that application of the Board’s new Average Total Cost (“ATC”) and Maximum Markup Methodology (“MMM”) methodologies to that traffic group has proven to be “very time-consuming.” Petition at 3 (“When applied to a potential traffic group as complex as the one involved in this case, execution of the [ATC] methodology is very time-consuming. . .”). SECI similarly represented in its first request for an extension of time that this case presented “complexity” that was “heightened” by the fact that SECI anticipated that it would be proposing a SARR with a broad geographic scope and significant “flows” of non-coal traffic. *See* SECI’s Unopposed Petition to Revise Procedural Schedule at 3 (filed April 30, 2009) (“The complexity of assembling the SARR/SAC building blocks is heightened in this case because the SARR will replicate portions of the existing CSXT system in several states, from origins in Indiana, Kentucky, Pennsylvania, and West Virginia to Florida, and likely will handle flows of non-coal traffic in addition to the issue and other coal traffic.”).

In light of the difficulties SECI represents it has faced in assembling its opening case, CSXT is concerned that it will be confronted with unprecedented challenges in deconstructing, evaluating, and responding to SECI’s SAC presentation once it has been finally submitted. SECI may be developing a SARR of unprecedented scope and complexity, one which could span more than a dozen states and which may move various types of traffic in addition to coal. Once SECI files its opening evidence, both CSXT and the Board may well conclude that additional time and/or procedures will be required to permit a full and fair explication and evaluation of that evidence.

Moreover, CSXT notes that SECI filed its Complaint on October 3, 2008 – nearly nine months ago – and that if the Petition is granted SECI’s opening evidence will not be filed until August 31 – nearly eleven months after its Complaint was filed and several months after the

close of discovery (and literally five months after CSXT produced the traffic and event files needed for the basic SAC traffic flow analysis). In short, SECI will have had an extraordinarily long time to prepare its case-in-chief. If that presentation is as novel and complex as SECI has suggested in its extension requests, it is highly likely that CSXT will be required to seek its own extension of time to develop and file its reply evidence. As the Board knows, it often takes a great deal of time and effort for a defendant railroad just to gain an understanding of the unstated assumptions and methodologies employed by the Complainant, something that must be done before the defendant railroad can even begin to construct its own reply submission. Therefore, if the Board decides to grant SECI additional time for its Opening Evidence, CSXT requests that the Board not foreclose the possibility of also affording CSXT additional time to file its Reply Evidence should that become necessary.

Respectfully submitted,



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Dated: June 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2009, I caused a copy of the foregoing Reply of CSX Transportation, Inc. to Seminole Electric Cooperative, Inc.'s Second Petition to Revise Procedural Schedule to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

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